

DM 03-046

BARC ENTERPRISES, LLC

Hearing On Violation of
Underground Utility Damage Prevention Program

Order to Show Cause Why BARC ENTERPRISES, LLC
Should Not Be Held Liable For Penalties Assessed, Expenses
Incurred, and Whether Additional Penalties Should Be Imposed

O R D E R N O. 24,133

March 3, 2003

On June 26, 2002, KeySpan Energy Delivery, a natural gas utility doing business in New Hampshire, reported to the Underground Utility Damage Prevention Program, as required by the New Hampshire Public Utilities Commission (Commission) pursuant to Puc 807.01, a probable violation at facilities located at 270 Londonderry Turnpike, Hooksett, New Hampshire.

The report alleged that, on June 26, 2002, BARC ENTERPRISES, LLC (Respondent) failed to follow the notification procedures prescribed by NH RSA 374:51, II, by failing to notify the damage prevention system of its intentions to perform excavation at the location of 270 Londonderry Turnpike, Hooksett, New Hampshire. Pursuant to RSA 374:51, II, the notification must be made at least 72 hours before a proposed excavation, exclusive of Saturdays, Sundays, and legal holidays, and no more than 30 days before the proposed excavation is to be made. Additionally, the report alleged that the Respondent did not adequately maintain the excavation

markings of natural gas facilities previously marked by an operator, constituting a probable violation of RSA 374:53 and, also, that Respondent caused damage within the boundaries of marked facilities, which constitutes a probable violation of RSA 374:55, V.

On August 29, 2002, the Safety Division of the Commission, pursuant to Puc 806.02, issued by certified mail a Notice of Probable Violation to Respondent (NOPV) No. 02086. The certified mail receipt indicates it was accepted on September 3, 2002. The NOPV set forth a detailed description of the probable violations alleged, referencing New Hampshire Statutes and NH PUC Administrative Rules violated by Respondent, and indicated the date and location of such violation. The Safety Division also advised the Respondent that civil penalties were likely to be imposed pursuant to RSA 374:55 and Puc 806.07 in the event of an unfavorable judgment and informed the Respondent of its statutory rights and alternatives for resolving the complaint.

Respondent did not respond to the Safety Division's August 29, 2002 NOPV letter and has not responded to attempts by the Safety Division to communicate. On December 30, 2002, the Safety Division sent Respondent a Notice of Violation, (NOV) No. 02086V, by certified mail. The receipt indicates acceptance on January 2, 2003. The 10-day response time afforded by Puc 806.05(a) has lapsed.

Respondent has failed and refused to respond to notices sent to it via certified mail, and has failed and refused to comply with the Underground Utility Damage Prevention Program, NH PUC Administrative Rules, and New Hampshire laws.

Based upon the foregoing, it is hereby

ORDERED, that BARC ENTERPRISES, LLC appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire on April 2, 2003, at 10:00 a.m. to show cause why the Respondent should not be held liable for civil penalties pursuant to RSA 374:55; and it is

FURTHER ORDERED, that the Executive Director of the Commission shall cause a copy of this order to be served on Respondent or his agent by certified mail, return receipt requested, no later than March 14, 2003.

By order of the Public Utilities Commission of New Hampshire this third day of March, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director